

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 02<sup>ND</sup> DAY OF DECEMBER, 2019

BEFORE

THE HON' BLE MR.JUSTICE R.DEVDAS

**CRIMINAL PETITION NO.7339/2016**

**C/W**

**CRIMINAL PETITION NOS.7340/2016 AND 7341/2016**

**IN CRL.P. NO.7339/2016**

**BETWEEN**

SRI H D KUMARASWAMY  
S/O SRI H D DEVEGOWDA  
AGED ABOUT 58 YEARS  
R/AT # 286, MINI FOREST ROAD,  
3RD MAIN, 3RD PHASE,  
J P NAGAR,  
BANGALORE - 560078

...PETITIONER

(BY SRI D L JAGADEESH, SENIOR COUNSEL A/W  
SMT RAKSHITHA D J, ADVOCATE)

**AND**

1 . STATE OF KARNATAKA  
BY CHIKKABALLAPURA TOWN POLICE,  
CHIKKABALLAPURA DISTRICT

2 . SRI S S ABID  
TEAM LEADER  
OFFICE OF THE DEPUTY DIRECTOR,  
CHIKKABALLAPURA DISTRICT  
CHIKKABALLAPURA - 562101

...RESPONDENTS

(BY SRI MAHESH SHETTY, ADVOCATE FOR R1  
R2 SERVED)

THIS CRIMINAL PETITION IS FILED UNDER SECTION  
482 CR.P.C PRAYING TO QUASH THE ENTIRE PROCEEDINGS  
IN C.C. NO.28/2014 PENDING DISPOSAL OF THE FILE OF

THE PRL.CIVIL JUDGE AND JMFC AT CHIKKABALLAPUR (PRODUCED AT ANNEXURE-A) AND CONSEQUENTLY QUASH THE FINAL REPORT IN CR.NO.111/2014 DATED 14.01.2014 SUBMITTED IN C.C. NO.28/2014 BASED ON WHICH THE COGNIZANCE OF THE OFFENCE IS TAKEN IN C.C.NO.28/2014 ON THE FILE OF THE PRL. CIVIL JUDGE AND JMFC AT CHIKKABALLAPURA FOR THE OFFENCE P/U/S 188 OF IPC (PRODUCED AT ANNEXURE-B).

**IN CRL.P. NO.7340/2016**

**BETWEEN**

SRI H D KUMARASWAMY  
S/O SRI H D DEVEGOWDA  
AGED ABOUT 58 YEARS  
R/AT # 286, MINI FOREST ROD,  
3RD MAIN, 3RD PHASE,  
J P NAGAR,  
BANGALORE - 560078

...PETITIONER

(BY SRI D L JAGADEESH, SENIOR COUNSEL A/W  
SMT RAKSHITHA D J, ADVOCATE)

**AND**

- 1 . STATE OF KARNATAKA  
BY CHIKKABALLAPURA TOWN POLICE,  
CHIKKABALLAPURA DISTRICT
- 2 . SRI S S ABHID  
TEAM LEADER  
OFFICE OF THE DEPUTY DIRECTOR,  
CHIKKABALLAPURA DISTRICT  
CHIKKABALLAPURA - 562101

...RESPONDENTS

(BY SRI MAHESH SHETTY, HCGP FOR R1  
R2 SERVED)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 CR.P.C PRAYING TO QUASH THE ORDER DATED 27.02.2015 TAKING COGNIZANCE OF THE OFFENCES BASED ON THE POLICE REPORT FILED IN C.C.NO.29/2014 PENDING DISPOSAL OF THE FILE OF THE PRL.CIVIL JUDGE AND

JMFC AT CHIKKABALLAPUR (PRODUCED AT ANNEXURE-A) AND CONSEQUENTLY QUASH THE FINAL REPORT IN CR.NO.97/2014 DATED 21.04.2014 SUBMITTED IN C.C. NO.29/2014 BASED ON WHICH THE COGNIZANCE OF THE OFFENCES IS TAKEN IN C.C.NO.29/2014 ON THE FILE OF THE PRL. CIVIL JUDGE (JR.DN.) AND JMFC AT CHIKKABALLAPURA FOR THE OFFENCE P/U/S 188 OF IPC (PRODUCED AT ANNEXURE-B).

**IN CRL.P. NO.7341/2016**

**BETWEEN**

SRI H D KUMARASWAMY  
S/O SRI H.D. DEVE GOWDA  
AGED ABOUT 56 YEARS  
R/AT KITHAGANAHALLI  
BIDADI HOBLI, RAMNAGARA

...PETITIONER

(BY SRI D L JAGADEESH, SENIOR COUNSEL A/W  
SMT RAKSHITHA D J, ADVOCATE)

**AND**

1 . STATE OF KARNATAKA  
BY CHIKKABALLAPURA TOWN POLICE  
CHIKKABALLAPURA DISTRICT  
REP. BY SPP, HIGH COURT BUILDING  
BANGALORE - 560001

2 . SRI S.S. ABHID  
TEAM LEADER  
OFFICE OF THE DEPUTY DIRECTOR  
CHIKKABALLAPURA DISTRICT  
CHIKKABALLAPURA - 562101

...RESPONDENTS

(BY SRI MAHESH SHETTY, HCGP FOR R1  
R2 SERVED)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 CR.P.C PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN C.C. NO.370/2015 PENDING ON THE FILE OF PRL.CIVIL JUDGE AND JMFC, CHIKKABALLAPURA (PRODUCED AT ANNEXURE-A) AND CONSEQUENTLY QUASH THE FIR IN

CR.NO.95/2014 DATED 21.04.2014 BASED ON WHICH THE COGNIZANCE OF THE OFFENCES IS TAKEN IN C.C.NO.370/2015 ON THE FILE OF THE PRL. CIVIL JUDGE AND JMFC AT CHIKKABALLAPURA FOR THE OFFENCE P/U/S 188 AND 341 OF IPC (PRODUCED AT ANNEXURE-B).

THESE PETITIONS COMING ON FOR ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

**R.DEVDAS J., (ORAL):**

These three criminal petitions arise out of three different complaints lodged by an Electoral Officer appointed by the Chief Election Commissioner to monitor the elections that took place in the month of March, 2014. The petitioner is the former Chief Minister against whom the official complainant has filed three different complaints for offences punishable under Sections 188 and 341 of IPC.

2. Sri D.L.Jagadeesh, learned Senior Counsel appearing for the petitioner in all these matters would submit that the matter stands covered by various decisions of co-ordinate benches of this Court. The learned counsel has drawn the attention of this Court to atleast three decisions in the case of

Sri **M.Veerappa Moily /vs./ State of Karnataka and another** decided on 30.07.2015 in *Cri.P. No.2237/2015*; in the case of **K.S.Eshwarappa /vs./ The State of Karnataka and another** in *Crl.P.No.201195/2015* decided on 13.04.2016 and in the case of **H.D.Kumaraswamy /vs./ State of Karnataka and another** in *Crl P.7342/2016* decided on 05.10.2016.

3. In the case of **K.S.Eshwarappa** (supra) this Court while referring to Section 195 of Cr.P.C. has held that the said provision clearly creates a statutory bar on the Court for taking cognizance unless the complaint in writing is made by the public servant concerned or some other public servant to whom he is administratively subordinate. It was therefore held that the provision takes away the general power of the Magistrate under Section 190 of Cr.P.C. to take cognizance without there being a complaint in writing. The Co-ordinate bench has further taken note of Section 171(H) of IPC and held

that the said provision is categorised as non-cognizable offence under the classification of the offence in schedule-II of the Cr.P.C. When the offence is declared as non-cognizable in nature, Section 155(2) of Cr.P.C. bars the police to investigate such matter without the valid permission from the jurisdictional Magistrate.

4. In so far as Section 341 of IPC is concerned, it has been pointed out by the learned Senior Counsel that the complaint would very clearly show that there is no specific allegation or personal allegation against the petitioner that he was guilty of restraining any person wrongfully. On the other hand, it is stated in the complaint that the workers of the political party have caused inconvenience to the general public by blocking the road. Therefore, it is submitted that the said allegation not being specific to the petitioner, the FIRs' are required to be quashed.

5. Learned HCGP submits that though the other provision i.e., Section 188 is covered by the judgment of the Co-ordinate bench however, Section 341 is not covered.

6. Having heard the learned Senior Counsel and on perusing the petition papers and the decisions referred to, it is found that this court has consistently held that unless and until there is a private complaint under Section 200 Cr.P.C. made to the Magistrate, the offence punishable under Sections 172 and 188, both inclusion of IPC cannot be taken cognizance of.

7. In so far as Section 341 is concerned, this Court accepts the contention of the learned Senior Counsel that the complaint does not make out a case as against the petitioner. The allegation is purportedly against the 'party' or the workers of the party.

8. In the light of the above, this Court is of the opinion that the petitions are required to be allowed and are accordingly allowed. The Final Report in Crime No.111/2014 dated 14.04.2014 in C.C.No.28/2014; Final Report in Crime No.97/2014 dated 21.04.2014 submitted in C.C.No.29.2014 and Final Report in Crime No.95/2014 dated 21.04.2014 submitted in C.C.No.370/2015, pending on the file of the Principal Civil Judge and JMFC at Chikkaballapura and all further proceedings pursuant to the FIRs' are hereby quashed and set aside. Ordered accordingly.

9. Liberty is granted to the respondent to initiate the proceedings in accordance with law, if so advised.

**Sd/-  
JUDGE**

KLY/